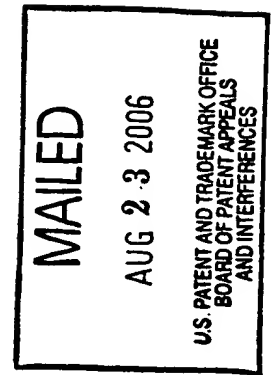


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES



Ex parte KENNETH JAMES BARKER,  
HAYDEN CLAVIE CRANFORD, JR., CHARLES REEVES HOFFMAN,  
JEFFREY JAMES LYNCH AND MARK EDMUND SCHEUER

Application No. 09/839,179

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on August 15, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

A review of the file indicates that on December 5, 2005, appellants filed an Appeal Brief under the rules set forth in 37 CFR § 41.37(c). However, the following items are missing:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section: . . . .

(iii) **Status of claims.** A statement of the status of all the claims in the proceeding (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled) and an identification of those claims that are being appealed.

Accordingly, the Appeal Brief filed on December 5, 2005 does not comply with the new rules under 37 CFR § 41.37(c). It is required that a substitute brief be submitted that is in

compliance with 37 CFR § 41.37(c). For more information on the Board's new rules see the web page entitled More Information on the Rules of Practice Before the BPAI, Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

On March 13, 2006, an Examiner's Answer was entered into the record. In the Evidence Relied Upon section, page 2, paragraph 8, the examiner has stated that "No evidence is relied upon by the examiner in the rejection of the claims under appeal." A review of the file reveals that references to Edem 5,805,597 and Hobson 6,360,327 were applied to the statement of rejections in the Grounds of Rejection, paragraph (9) of the examiner's answer. Before further review, the examiner must submit a corrected examiner's answer that will include in the Evidence Relied Upon section, the list of references mentioned in the statement of rejections. See the Manual of Patent Examining Procedure, (MPEP) 1207.02. Appropriate correction is required.

Accordingly, it is

**ORDERED** that the application is returned to the Examiner for:

1) request to have the appellants submit a substitute Appeal Brief in compliance with the new rules set forth in 37 CFR § 41.37(c);

2) to issue a revised Examiner's Answer having the missing references listed under the Evidence Relied Upon section, paragraph (8); and

3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By: 

DALE M. SHAW

Deputy Chief Appeal Administrator  
(571) 272-9797

DMS/kis

CC: DRIGGS, HOGG & FRY CO., L.P.A.  
38500 CHARDON ROAD  
DEPT. IRA  
WILLOUGBY HILLS, OH 44094